

BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
against:

JAMES ALLEN HAWK, M.D.
Certificate No. G-43387

No. D-4481

Respondent.)

DECISION

The attached Stipulation and Waiver
is hereby adopted by the Division of Medical Quality of the
Medical Board of California as its Decision in the above-entitled
matter.

This Decision shall become effective on January 16, 1992.

IT IS SO ORDERED December 17, 1991.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA

Theresa L. Claassen

THERESA L. CLAASSEN
Secretary/Treasurer

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ALFREDO TERRAZAS
Deputy Attorney General
3 455 Golden Gate Avenue, Room 6200
San Francisco, California 94102-3658
4 Telephone: (415) 557-2515
5 Attorneys for Complainant

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BEFORE THE

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DIVISION OF MEDICAL QUALITY

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MEDICAL BOARD OF CALIFORNIA

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STATE OF CALIFORNIA

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12 In the Matter of the Accusation
Against:

No. D-4481

13

JAMES ALLEN HAWK, M.D.
14 308 Sycamore Hill Court
Danville, California 94526
15 Physician's and Surgeon's
Certificate No. G-43387

STIPULATION AND WAIVER

16

Respondent.

17

18 IT IS HEREBY STIPULATED by and between James Allen
19 Hawk, M.D., the respondent in this matter and Kenneth J.
20 Wagstaff, as Executive Officer of the Medical Board of
21 California, Department of Consumer Affairs, by and through his
22 attorney, Alfredo Terrazas, Deputy Attorney General, that the
23 following matters are true:

24 1. Accusation No. D-4481 is presently pending against
25 James Allen Hawk, M.D., (hereinafter referred to as the
26 "respondent"), physician's and surgeon's certificate number

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1 G-43387, before the Medical Board of California (hereinafter
2 referred to as the "Board") and said Accusation having been filed
3 on or about March 25, 1991.

4 2. The complainant in said Accusation, Kenneth J.
5 Wagstaff, is the Executive Officer of the Board and brought said
6 Accusation in his official capacity only.

7 3. Respondent has fully reviewed the charges contained
8 in the above-mentioned Accusation, and in that connection,
9 respondent has been fully advised regarding his rights in this
10 matter.

11 4. That respondent hereby freely and voluntarily
12 waives his right to a hearing on the charges and allegations
13 contained in the above-mentioned Accusation in order to enter
14 into this Stipulation and Waiver and that he further agrees to
15 waive his right to reconsideration, judicial review, and any and
16 all rights which may be accorded him by the Administrative
17 Procedure Act and the laws of the State of California, except his
18 right to petition for termination or modification of probation
19 pursuant to Government Code section 11522.

20 5. All admissions of fact and conclusions of law
21 contained in this Stipulation are made exclusively for this
22 proceeding and any future proceedings between the Board and the
23 respondent and shall not be deemed to be admissions for any
24 purpose in any other administrative, civil or criminal action,
25 forum or proceeding.

26 6. That the respondent's license history and status as
27 set forth at paragraph 2 of the Accusation are true and correct

1 and that the respondent's address of record is as set forth in
2 the caption of this Stipulation and Waiver. (A copy of
3 Accusation Number D-4481 is attached hereto as Exhibit A).

4 7. For purposes of the settlement of the action
5 pending against respondent in case No. D-4481 and to avoid a
6 lengthy administrative hearing, respondent admits that there is a
7 factual and legal basis for the imposition of discipline pursuant
8 to the allegations of Accusation Number D-4481. Respondent
9 admits that he made a wrong judgment about patient ~~Robert~~
10 ~~Morgan~~'s symptoms and was not aggressive enough about pursuing
11 the possible causes of them. He recognizes and acknowledges that
12 he too readily dismissed consideration of cancer and opted
13 instead for a working diagnosis of hematoma or hemangioma which
14 he felt was consistent with the patient's symptoms. Dr.
15 Sievenpiper acknowledges that he developed too narrow a
16 perspective in March 1989 which affected his judgments about
17 patient R M and that he missed the diagnosis in this
18 case.

19 Respondent recognizes that he should not have removed
20 the lesion in question without taking a biopsy for laboratory
21 examination. Respondent states, in mitigation, that the usual
22 signs of an invasive melanocytic lesion were not noted in the
23 benign appearance and nature of the skin defect in question.

24 Respondent's conduct as alleged hereinabove in this
25 paragraph constitutes incompetence and therefore general
26 unprofessional conduct pursuant to Business and Professions Code
27 section 2234(d).

1 8. That it is understood by all parties hereto that by
2 virtue of the foregoing recitals:

3 IT IS HEREBY STIPULATED AND AGREED that the Medical
4 Board of California, upon its approval of the Stipulation and
5 Waiver herein set forth, may, without further notice, prepare a
6 decision and enter the following order, whereby Physician and
7 Surgeon Certificate No. G-43387, heretofore issued to respondent
8 by the Medical Board of California, is hereby revoked, PROVIDED
9 HOWEVER, that execution of this order of revocation is stayed,
10 and respondent is placed on probation for a period of five (5)
11 years, upon the following terms and conditions:

12 GENERAL TERMS OF PROBATION

13 A. Respondent shall obey all laws of the United
14 States, State of California, and its political subdivisions, and
15 all rules and regulations and laws pertaining to the practice of
16 medicine.

17 B. Respondent shall submit quarterly declarations
18 under penalty of perjury on forms provided by the Board stating
19 whether there has been compliance with all the conditions of
20 probation.

21 C. Respondent shall comply with the Board's probation
22 surveillance program.

23 D. Respondent shall appear in person for interviews
24 with the Board or its designee upon request at various intervals
25 and with reasonable notice.

26 E. In the event respondent should leave California to
27 reside or to practice outside the State, respondent must notify

1 the Board in writing of the dates of departure and return.
2 Periods of residency or practice outside California will not
3 apply to the reduction of this probationary period.

4 F. Within 90 days of the effective date of this
5 decision, and on an annual basis thereafter, respondent shall
6 submit to the Board for its prior approval an educational
7 program(s) or course(s) related to General Medicine which shall
8 not be less than 40 hours per year, for each year of probation.
9 Following the completion of each course, the Board or its
10 designee may administer an examination to test respondent's
11 knowledge of the course.

12 G. Within 60 days of the effective date of this
13 decision, respondent shall take and pass an oral or written
14 examination in General Medicine to be designated and administered
15 by the Division or its designee. If respondent fails this
16 examination, respondent must take and pass a re-examination
17 consisting of a written as well as an oral examination. The
18 waiting period between repeat examinations shall be at three
19 month intervals until success is achieved.

20 The Division shall pay the cost of the first examination and
21 respondent shall pay the costs of any subsequent examinations.

22 If respondent fails the first examination, respondent
23 shall cease the practice of medicine until the re-examination has
24 been successfully passed, as evidenced by written notice to
25 respondent from the Division. Failure to pass the required
26 examination no later than 100 days prior to the termination date
27 of probation shall constitute a violation of probation.

1 H. Within thirty (30) days of the effective date of
2 this decision, Dr. Hawk shall submit to the Division for its
3 approval a plan of practice in which Dr. Hawk's practice shall be
4 monitored by another physician in his field of practice, who
5 shall provide periodic reports to the Division. This monitoring
6 will involve regularly scheduled, random chart reviews with
7 regular reports to the Division at a frequency designated by the
8 Division.

9 If the monitor resigns or is no longer available, Dr.
10 Hawk shall, within fifteen (15) days, submit a new monitor to the
11 Division for its approval.

12 I. Within 60 days of the effective date of this
13 decision, respondent shall submit to the Division for its prior
14 approval a course in Ethics, which respondent shall successfully
15 complete during the first year of probation.

16 J. Upon successful completion of probation,
17 respondent's certificate will be fully restored.

18 K. If respondent violates probation in any respect,
19 the Division, after giving respondent notice and the opportunity
20 to be heard, may revoke probation and carry out the disciplinary
21 order that was stayed. If an accusation or petition to revoke
22 probation is filed against respondent during probation, the
23 Division shall have continuing jurisdiction until the matter is
24 final, and the period of probation shall be extended until the
25 matter is final.

26 9. Upon full compliance with all the terms and
27 conditions hereof, and the expiration of five years from the

1 effective date of this decision, this stay shall become
2 permanent, and respondent's physician's and surgeon's license
3 shall be fully restored.

4 10. IT IS FURTHER STIPULATED AND AGREED that the terms
5 set forth herein shall be null and void, and in no way binding
6 upon the parties hereto, unless and until accepted by the Medical
7 Board of California of the State of California.

8
9 DATED: Nov. 25, 1991

DANIEL E. LUNGREN
Attorney General of the
State of California

11
12 Alfredo Terrazas
13 ALFREDO TERRAZAS
14 Deputy Attorney General

Attorneys for Complainant

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16 I hereby certify that I have read this Stipulation and
17 Agreement in its entirety, that I fully understand all of same,
18 and in witness thereof, I affix my signature this 29 day of
19 November, 1991 at Danville,
20 California.

21
22 James A Hawk MD
23 JAMES ALLEN HAWK, M.D.
24 Respondent

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27 03598160
SF90AD1466
11/25/91

EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ALFREDO TERRAZAS
Deputy Attorney General
3 455 Golden Gate Avenue, Room 6200
San Francisco, California 94102-3658
4 Telephone: (415) 557-2515

5 Attorneys for Complainant

7 BEFORE THE
DIVISION OF MEDICAL QUALITY
8 MEDICAL BOARD OF CALIFORNIA
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation
Against:

No. D-4481

ACCUSATION

12
13 JAMES ALLEN HAWK, M.D.
308 Sycamore Hill Court
14 Danville, CA 94526
Physician & Surgeon License
15 No. G-43387

16 Respondent.

17
18 KENNETH J. WAGSTAFF, complainant herein, charges and
19 alleges as follows:

20 1. He is the Executive Director of the Medical Board
21 of California, State of California (hereinafter "the Board") and
22 makes these charges and allegations solely in his official
23 capacity.

24 2. At all times material herein, respondent JAMES
25 ALLEN HAWK, M.D. (hereinafter "respondent") has held physician
26 and surgeon certificate No. G-43387 which was issued to him by
27 the Board on or about September 22, 1980. Said certificate is in

1 good standing at the present time. No prior disciplinary action
2 has been taken against said certificate.

3 3. Section 2001 of the Business and Professions
4 Code^{1/} (hereinafter referred to as the "code") provides for the
5 existence of the board.

6 4. Section 2003 provides for the existence of the
7 Division of Medical Quality (hereinafter referred to as the
8 "division") within the board.

9 5. Section 2004 provides, inter alia, that the
10 division is responsible for the administration and hearing of
11 disciplinary actions involving enforcement of the Medical
12 Practice Act (section 2000 et seq.) and the carrying out of
13 disciplinary action appropriate to findings made by a medical
14 quality review committee, the division, or an administrative law
15 judge with respect to the quality of medical practice carried out
16 by physician & surgeon certificate holders.

17 6. Section 2220, 2234 and 2227 together provide that
18 the division shall take disciplinary action against the holder of
19 a physician's and surgeon's certificate who is guilty of
20 unprofessional conduct.

21 7. Section 2234 provides in part, as follows:

22 "The Division of Medical Quality shall take
23 action against any licensee who is charged with
24 unprofessional conduct. In addition to other
25 provisions of this article, unprofessional conduct
26 includes, but is not limited to the following:

(a) Violating or attempting to violate,
directly, or assisting in or abetting the

27 1. All statutory references are to the Business and
Professions Code unless otherwise indicated.

1 violation of, or conspiring to violate, any
2 provision of this chapter.

3 (b) Gross negligence.

4 (d) Incompetence."

5 8. At all times mentioned hereinafter, respondent
6 practiced as a physician in California.

7 9. Respondent is subject to disciplinary action in
8 that respondent has committed violations of Business and
9 Professions Code sections 2234(a), (b), and/or (d), in connection
10 with the care and treatment of patient ~~Robert E. MacGregor~~
11 (hereinafter "patient") as more particularly alleged hereinbelow:

12 A. Patient ~~MacGregor~~, d.o.b. [REDACTED], had been
13 under the care of respondent, on an intermittent basis,
14 since approximately May of 1984. On March 8, 1989
15 patient visited respondent with a lesion described by
16 respondent as a hemangioma of the left lateral thigh.
17 During a pervious visit on March 3, 1989 a nurse's note
18 indicated a "lump on left leg". On March 8, 1989,
19 respondent performed a shave excision of the lesion
20 under local anesthesia with a treatment of
21 electrocauterization. Respondent did not obtain a
22 specimen of the "mole" for examination (Biopsy) by a
23 pathologist.

24 B. The patient was next seen by respondent on June 7,
25 1989 for a swelling in the left groin area. Respondent
26 diagnosed the swelling as inguinal adenopathy of the
27 same side which he attributed to a tinea pedis
infection and secondary bacterial cellulitis.

1 Treatment was ordered by respondent which consisted of
2 the prescription of an antibiotic medication.

3 C. Patient was next seen and
4 reexamined on June 20, 1989 whereupon patient described
5 symptoms of dizziness, passed on the morning, blurred
6 vision, difficulty breathing, feelings of wanting to
7 throw up and feeling shaky. Examination revealed
8 enlarged nodes in the anterior cervical, axillary and
9 left epitrochlear area. Respondent diagnosed patient's
10 condition as a vasovagal reaction to upper respiratory
11 infection and treated the patient with another
12 antibiotic.

13 D. Patient M [REDACTED] called respondent's office
14 on June 26, 1989 and indicated that the medication
15 given to him at the last appointment with respondent
16 was not working and further complained of back problems
17 of approximately six weeks duration. Patient again
18 called respondent's office on June 27, 1989 to advise
19 that the medications were not helping him and an MRI
20 (Magnetic Resonance Imaging) was scheduled for him.

21 E. In July 1989 patient was seen in urgent
22 consultation by an internist while in Massachusetts and
23 underwent a biopsy because of a marked lymphadenopathy.
24 The initial pathology report was Anaplastic malignant
25 neoplasm suggestive of metastatic malignant melanoma.
26 Thereafter, patient M [REDACTED] underwent an unsuccessful
27 //

1 course of chemotherapy and died of metastatic malignant
2 melanoma in November 1989 at the age of 26.

3 F. Despite the above appointments and/or other
4 complaints made by or on behalf of Patient M [REDACTED],
5 and/or other signs or symptoms exhibited by him,
6 respondent failed to perform and/or refer patient
7 M [REDACTED] for the performance of appropriate laboratory
8 tests, radiographic examinations and/or other tests,
9 for his lesion and other pain and discomfort, in a
10 timely manner or at all.

11 G. Despite the above appointments and/or other
12 complaints made by or on behalf of patient M [REDACTED], and/or
13 other signs or symptoms exhibited by him, respondent failed
14 to diagnose or treat and/or refer for diagnosis and
15 treatment, patient M [REDACTED]'s metastatic malignant melanoma
16 (cancer), in a timely manner, or at all.

17 FIRST CAUSE FOR DISCIPLINARY ACTION

18 10. The allegations of paragraph 9(A) through 9(G) are
19 incorporated herein by reference.

20 11. Respondent's conduct as set forth in paragraph
21 9(A) through 9(G) hereinabove constitutes gross negligence and/or
22 incompetence pursuant to sections 2234(b) and/or (d).

23 WHEREFORE, complainant requests that a hearing be held
24 and that thereafter the Board issue an order:

25 1. Revoking or suspending respondent's physician and
26 surgeon's certificate number G-43387; and

27 //

1 2. Taking such other and further action as is deemed
2 just and proper.

3
4 DATED: March 25, 1991

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6 
7 KENNETH J. WAGSTAFF
8 Executive Director
9 Medical Board of California
10 State of California

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23 Complainant
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